

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.1451 of 1990

Date of decision:24.02.2009

Ishwar Dutt and others

...Petitioners

versus

Jangra Brahman Dharamshala, Gurgaon
and another

...Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. C.B.Goel, Advocate and Mr. Sanjiv Gupta, Advocate
for the petitioners.

None for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether the judgment should be reported in the digest ?

K.Kannan, J.(Oral)

1. The petition for eviction has been filed at the instance of society under the provisions of Haryana Urban Rent Control Act, 1973, for non payment of rent and for sub-letting from 01.04.1983 to 31.06.1986 by the first respondent to the second respondent. The issue of non-payment of rent assume no significance after the rent was tendered and the case was considered only on the alleged ground of sub-letting. The Rent Controller dismissed the petition, but the Appellate Authority reversed the finding of the Rent Controller and directed eviction. Hence, the tenant is the revision petitioner before this Court.

2. While allowing the appeal, the Appellate Authority considered the fact that when it was shown that the first respondent

Hoshiar Singh was a tenant originally and when it was admitted that at the time of trial, the first respondent was admittedly not in possession but it was in the hands of the second respondent who claimed to be an independent tenant from the landlord, it was on him to establish such direct tenancy. The Appellate Authority found fault with the reasoning of the Rent Controller by referring to the rent receipt issued in the name of first respondent which established the tenancy in favour of the first respondent prior to the institution of a suit by the first respondent that resulted in a compromise, which was soon to be followed by a resolution of the society that the property was to be let again to the first respondent and soon thereafter, the tenancy had commenced with the first respondent on 1st December, 1981. In fact, there were no receipts at all for proof of the fact that the second respondent had paid rent to the landlord and he was a direct tenant under the landlord. The evidence of Hoshiar Singh himself who was examined as a witness for the respondent and whose statement was to the effect that he alone was the tenant under the society. The last aspect of the case was taken by the Appellate Authority as constituting an admission on the side of the second respondent which betrayed the falsity of the contention of the second respondent. That there was no sub-tenancy and that he was a direct tenant.

3. Learned counsel appearing for the revision petitioner assails the finding of the Appellate Authority by pointing out that the resolution passed by the society made reference only to taking action against the first respondent for non-payment of rent and did not refer to

the tenant that there was any form of sub-tenancy and that the resolution authorized the president to file a petition for eviction also on the ground of sub-letting. This objection in my view is not tenable, since the resolution was not expected to contain all the details of the grounds of eviction. That the landlord contemplated action for eviction was good enough to sustain the objection. The further submission of the learned counsel for the revision petitioner is that the first respondent had been working elsewhere and he could not be a tenant. This contention is also meaningless for a person who was in regular employment elsewhere may still be in business or hold possession of any other property. After all, the earlier suit for injunction filed by the first respondent itself was for declaration that he was a tenant and that possession shall not be disturbed except by due process. This petition had also come to be instituted during the alleged period when he was under employment elsewhere.

4. Further, the learned counsel appearing for the tenant seeks to downplay the fact of the admission of the first respondent who had stated, as a witness of of 2nd respondent that he was the tenant under the petitioner, on the ground that his evidence was contrary to the written statement and therefore ought not have been accepted. This is also, in my view, untenable since an evidence in Court which constituted an admission for party need not conform to pleadings. If it was the contention of the tenant that the witness had turned hostile and he was stating against the truth in support of the landlord, the tenant must have taken the permission of the Court to treat him as hostile and subjected to

him cross-examination or suggested to him that he had colluded with the landlord. The learned counsel points out that the receipts alleged to have been issued to the first respondent had not been confronted to him to elicit about the genuineness of the documents. In my view, there is hardly any such necessity for the landlord to put the receipts to him again when there was evidence through the president of the society that the receipts had been issued only to the first respondent. He had also identified the signature of the first respondent in the counter-foil .

5. The Appellate Authority had justified the reasons to find fault in the reasoning of the Rent Controller and took a decision reversing the finding of the Rent Controller. I am in full agreement with the reasoning adopted by the Appellate Authority and find that there is no scope for interference.

6. The revision petition is, accordingly, dismissed. Time for eviction is three months.

(K.KANNAN)
JUDGE

24.02.2009
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